

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

DIANA MARIE ASHTON,

Respondent

v.

CHRISTOPHER MICHAEL ASHTON.

Appellant

DOCKET NUMBER WD79943

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: February 28, 2017

Appeal From:

Circuit Court of Boone County, MO
The Honorable Sue Murvin Crane, Judge

Appellate Judges:

Division One
James Edward Welsh, P.J., Anthony Rex Gabbert, and Edward R. Ardini, Jr., JJ.

Attorneys:

Sara Michael, Jefferson City, MO

Counsel for Appellant

Attorneys:

Gary Stamper, Columbia, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**DIANA MARIE ASHTON, Respondent, v.
CHRISTOPHER MICHAEL ASHTON, Appellant**

WD79943

Boone County

Before Division One Judges: Welsh, P.J., Gabbert, and Ardini, JJ.

Christopher Ashton ("Father") and Diana Ashton ("Mother"), share joint physical and legal custody of their two children. In 2016, Mother e-mailed Father stating that she intended to relocate the children in less than a month. Two months later, Father filed objections to the relocation. Mother filed a motion to dismiss Father's objections as untimely under the relocation statute (§ 452.377, RSMo), which requires any objections to be filed within thirty days of receiving the relocation notice. The circuit court dismissed Father's objections with prejudice. Father appeals on the basis that Mother did not give proper notice of her intent to relocate pursuant to section 452.377, and, thus, his objections were not untimely.

Vacated.

Division One holds:

Mother failed to comply with section 452.377.2 by failing (1) to provide Father notice of the proposed relocation "in writing by certified mail, return receipt requested," and (2) to provide notice "at least sixty days in advance of the proposed relocation," "absent exigent circumstances as determined by a court with jurisdiction."

The requirement that notice be provided sixty days in advance "absent exigent circumstances as determined by a court with jurisdiction," indicates that, where a parent proposes to relocate in less than sixty days, there must be a court hearing to determine whether "exigent circumstances" exist. Consequently, in that situation, there can be no non-court-ordered relocation, and, thus, Mother could not avail herself of the non-court-ordered procedure provided by section 452.377. Whether Father timely objected is inconsequential because the matter has not been properly presented to the trial court for resolution. It was incumbent upon Mother to seek court authorization for her proposed relocation by filing a motion to modify. The judgment is vacated.

Opinion by James Edward Welsh, Presiding Judge

February 28, 2017

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